HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT APPEAL No.279 OF 2007

Between:

Dasarapu Sathaiah and another

... Appellants

And

The Commissioner, Settlement,
Survey and Land Records, Survey Bhavan,
Narayanaguda, Hyderabad and seven others

... Respondents

::JUDGMENT::

Counsel for the appellants : Shri Syed Shareef Ahmed

Counsel for respondent Nos.1 and 2 : Government Pleader for Revenue

Counsel for respondent Nos.3 to 8 : None

June 28, 2007

Per G.S. Singhvi, CJ

This appeal is directed against order dated 20-2-2007 passed by the learned Single Judge in Writ Petition No.3137 of 2007, whereby he declined to set aside order dated 15-2-2007 passed by the Commissioner, Settlement, Survey and Land Records, Andhra Pradesh (hereinafter referred to as 'the Commissioner') in Case

No.N2/4139/2005.

A perusal of the record shows that application filed by the appellants for survey of land measuring Ac.23.23 guntas comprised in Survey No.204 of Banda Somaram Village was dismissed by District Collector, Nalgonda vide his order dated 11-3-2005. The appellants challenged that order by filing an appeal under Sections 11 and 12 of the Andhra Pradesh Survey and Boundaries Act, 1923, which was dismissed by the Commissioner in default on 15-7-2006 because no one was present on behalf of the appellants. Immediately thereafter, the appellants filed an application along with the affidavit of Sri Raj Kumar Rudra, Advocate for restoration of the appeal. The Commissioner did not pass any order on the application necessitating filing of Writ Petition No.17980 of 2006. The learned Single Judge disposed of that petition with a direction to the Commissioner to decide the application for restoration.

In compliance of the Court's order, the Commissioner passed order dated 15-2-2007 and dismissed the application for restoration by recording the following observations:

> "…….The petition dt.20.07.2006 mentions that Advocate suffered ill health and viral fever. There is no evidence or document to support this contention. Even otherwise, it is incumbent upon the concerned party or Advocate when a notice is served on them for hearing to intimate the court at the time of hearing through appropriate method about their inability to attend the hearing for whatever be the reason and request for adjournment which was not done in the instant case. While so, the restoration cannot be sought or demanded as a matter of right. I see no reason why the case dismissed in default should be restored and as such the petition requesting for restoration filed by the petitioners on 20.07.2006 is hereby dismissed."

The legality of the aforementioned order was questioned by the appellants in Writ Petition No.3137 of 2007. The learned Single Judge

dismissed the writ petition on the ground that the appellants did not produce any evidence to prove the illness of the advocate.

We have heard learned counsel for the parties. In paragraphs 2 and 3 of affidavit dated 17-7-2006 filed by him in support of the application for restoration, Sri Raj Kumar Rudra, Advocate, averred as under:

> "2. I submit that the case is posted for hearing on 15-7-2006. It is learnt that the case was dismissed for default. I submit that on 15-7-2006 due to sudden ill-health, I was suffering with viral fever and I could not attend the Hon'ble Court. The absence is neither willful nor wanton nor deliberate except due to the circumstances stated above.
>
> 3. I submit that the Hon'ble Court may kindly intervene and set aside the dismissal order dated 15-7-2006 passed in the above appeal, otherwise the appellants will be put to irreparable loss and hardship."

The respondents did not file reply to controvert the above reproduced averments. Notwithstanding this, the Commissioner refused to rely on the statement of the advocate by observing that no evidence or document had been produced in support of the factum of illness. The learned Single Judge approved the order of the Commissioner by adopting the same line of reasoning.

In our opinion, in the absence of any pleading to the contrary, the Commissioner ought to have accepted the statement made by the advocate that he could not attend the hearing of the appeal on 15-7-2006 due to the fact that he was suffering from viral fever. If the Commissioner thought that the affidavit of the advocate was not sufficient, he could have called upon the appellants to produce medical certificate. Without adopting that course, the officer concerned should not have outrightly rejected the affidavit of the advocate showing his inability to appear on the date of hearing due to illness. It must be remembered that an advocate is an officer of the court and the

statement made by him should normally be accepted unless it is shown to be untruthful or contrary to the records.

Since the Commissioner and the learned Single Judge have not assigned cogent reasons for discarding the affidavit filed by Sri Raj Kumar Rudra, we feel that ends of justice will be met by setting aside the order impugned in the writ petition as also the one under challenge in this appeal.

In the result, the appeal is allowed. The order of the learned Single Judge and the one dated 15-2-2007 passed by the Commissioner in Case No.N2/4139/2005 are set aside with a direction to the latter to restore the appeal and decide the same on merits.

As a sequel to disposal of the appeal in the manner indicated above, WAMP. No.529 of 2007 filed by the appellants for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

June 28, 2007

C.V. NAGARJUNA REDDY, J

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